
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID MARTINCIC and MERL)	CIVIL ACTION No. 2:20-cv-00958-JFC
WILLIAMS, his husband,)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
A.O. SMITH CORPORATION, et al.,)	
)	
Defendants.)	
)	

PLAINTIFFS' MOTION TO REMAND

Plaintiffs, through their undersigned counsel, move to remand this action to the Court of Common Pleas of Allegheny County, Pennsylvania, and in support of this Motion, state as follows:

1. Plaintiffs David Martincic and Merl Williams filed this action in the Court of Common Pleas of Allegheny County, Pennsylvania, on May 7, 2020, alleging that Defendants, under theories of negligence and/or strict liability, were responsible for the asbestos exposure he suffered and which subsequently caused his mesothelioma.

2. In their Complaint, Plaintiffs expressly state:

Plaintiff served his country in the United States Navy from 1966 to 1969. Plaintiff is not bringing any claims in the instant complaint for exposure to asbestos-containing products during his service in the United States Navy.

See Foster Wheeler's Notice of Removal, ECF No. 1 at Exhibit A, ¶ 180.

3. Nevertheless, Defendant Foster Wheeler LLC (“Foster Wheeler”) removed this action today, its only asserted basis of federal jurisdiction being the federal contractor defense. *See* Foster Wheeler’s Notice of Removal ECF No. 1.

4. Foster Wheeler also asserts that this defense arises, solely, on Mr. Martincic’s exposure to its asbestos-containing products occurring during his service in the United States Navy from 1966-1969. *See* Foster Wheeler’s Notice of Removal ECF No. 1 at ¶¶ 2-3, 7.

5. However, Mr. Martincic not having claims against Foster Wheeler for any exposure to its asbestos-containing products occurring during Mr. Martincic’s service in the United States Navy, Foster Wheeler has no federal officer defense in this action.

6. Hence, there being no federal defense in this action, this Court lacks jurisdiction over this action.

WHEREFORE, for these reasons and those stated in Plaintiffs’ accompanying Brief in Support, Plaintiffs ask this Court to remand this action to the Court of Common Pleas of Allegheny County, Pennsylvania.

Dated: June 29, 2020

Respectfully submitted,

GOLDBERG, PERSKY & WHITE, P.C.

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